

**RESOLUTION NO. 73312**

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE DENYING THE APPEAL BY HELLYER COMMONS LLC, AND MODIFYING THE PLANNING DIRECTOR'S CONDITIONAL APPROVAL OF TENTATIVE SUBDIVISION MAP, FILE NO. T05-094, REDUCING THE NUMBER OF THE APPLICANT'S REQUESTED 64 INDUSTRIAL CONDOMINIUM UNITS TO 48 INDUSTRIAL CONDOMINIUM UNITS IN 16 EXISTING BUILDINGS WITH A MINIMUM UNIT SIZE OF 1,450 SQUARE FEET FOR THE INDUSTRIAL PARK PROJECT LOCATED ON 9.9 GROSS ACRES AT THE SOUTHEAST CORNER OF PIERCY ROAD AND HELLYER AVENUE

**FILE NO. T05-094**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San Jose Municipal Code, on October 18, 2005, an application (File No. T05-094) was filed for a Tentative Condominium Map by Hellyer Commons LLC (hereinafter "Applicant" or "Appellant") for the purpose of a 64-unit industrial condominium project, on that certain real property located at the southeast corner of Piercy Road and Hellyer Avenue, San Jose, and more particularly described in Exhibit "A," attached hereto and incorporated herein by reference (hereinafter "Subject Property"); and

**WHEREAS**, the Subject Property is located in an Industrial Park Zoning District; and

**WHEREAS**, on May 3, 2006, pursuant to and in accordance with Chapter 19.12 of Title 19 of the San Jose Municipal Code, the Planning Director conducted a hearing on said application; and

**WHEREAS**, on May 5, 2006, the Planning Director conditionally approved the application, including the condition that the maximum number of units be reduced from 64 to 34 with a minimum size of 1,450 square feet each, which decision is appealed to the City Council by the Appellant, which Tentative Condominium Map for File No. T05-094 is attached hereto and incorporated herein by reference as Exhibit "B" (hereinafter "Tentative Condominium Map"); and

**WHEREAS**, pursuant to the CEQA guidelines, this project was found to be exempt as a minor land division under 14 Cal. Code of Regs. § 15315; and

**WHEREAS**, pursuant to and in accordance with Chapter 19.12 of Title 19 of the San Jose Municipal Code, this City Council conducted a hearing on the appeal on June 27, 2006, notice of which was duly given; and

**WHEREAS**, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said appeal; and

**WHEREAS**, at said hearing, this City Council received in evidence the Appellant's development plan for the subject property, which plan is entitled "Tentative Map for Condominium Purposes, Piercy and Hellyer," dated September 2005 (hereinafter "Applicant's Proposal"). The Applicant's Proposal is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, and said Applicant's Proposal is incorporated herein by this reference as if it were fully set forth herein; and

**WHEREAS**, at said hearing this City Council also received and considered the relevant reports and recommendation of the Planning Director, and the Tentative Condominium Map conditionally approved by the Planning Director,; and

**WHEREAS**, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this City Council.

**NOW, THEREFORE:**

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the southeasterly corner of Piercy Road and Hellyer Avenue.
2. The site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the IP Industrial Park Zoning District.
4. The project site is located in the New Edenvale Redevelopment Area, east of U.S. Highway 101, for which the City of San Jose has invested significant resources to create a prime industrial park center for larger-scale technology users and the driving industry sector.

5. Pursuant to CEQA Guidelines, this project was found to be exempt as a minor land division pursuant to 14 Cal. Code of Regs. § 15315.
6. The subject site is surrounded by rural residential and vacant industrial land to the north, rural residential and church/religious assembly uses to the east, and vacant industrial land to the south and west.
7. The Applicant's Proposal includes up to 64 condominium units, with a minimum size of 1,450 square feet. Given the amount of on-site building space of approximately 98,000 square feet, the Applicant's proposed subdivision into 64 condominium units would result in an average unit size of approximately 1,530 square feet.
8. Pursuant to Sections 19.12.130 and 19.12.220 of the San Jose Municipal Code and Government Code sections 66474(a), (b) and (c), the Planning Director, and now the City Council on appeal, is required to make a determination of consistency of the Applicant's Proposal with the City's General Plan, any applicable specific plan, the requirements of Title 19 of the San Jose Municipal Code (the "Subdivision Ordinance"), and the requirements of Government Code section 66474, among other required determinations. The relevant sections of the applicable San Jose 2020 General Plan and other policies affecting land use determinations are as follows:

(a) 2020 General Plan: Chapter V. Land Use/Transportation Diagram states the following policies with regard to the Industrial Park designation relevant to this project:

"The Industrial Park designation is an exclusive industrial designation intended for a wide variety of industrial users such as research and development, manufacturing, assembly, testing and offices. Industrial uses are consistent with this designation insofar as any functional or operational characteristics of a hazardous or nuisance nature can be mitigated through design controls. Areas identified exclusively for Industrial Park uses may contain a very limited amount of supportive and compatible commercial uses, when those uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.

"An Industrial Park development may be either a single use or a development containing several separate uses, which is zoned, planned, developed and managed as a unit."

(b) 2020 General Plan: Chapter III. Major Strategies, Economic Development, states the following policies with regard to the encouragement of economic development, including industrial:

"Economic development is a fundamental priority for future growth, not only in order to improve the City's financial position but to improve the City's financial position but also to provide employment opportunities for San Jose's residents. The City's land use and transportation policies are designed to create attractive

locations for a variety of businesses and industries. One of San Jose's strengths is the amount of vacant land available for future development; approximately 3900 acres of planned commercial, office and industrial land are expected to be absorbed between 1990 and 2020. This planned acreage offers a variety of industrial lands to accommodate choice in location in order to improve the City's competitive position. Much of this vacant land is also well distributed along the primary north-south transportation corridors serving the City.

"To maximize the economic potential of the City's land resources, programs and policies must be carefully orchestrated with market conditions in order to attract the desired types of development."

(c) The 2020 General Plan contains a separate designation for Office uses for areas where Office uses are the intended primary use.

(d) The New Edenvale Redevelopment Area Plan states that the "primary land use in the Project Area is industrial park. Industrial Park uses are developed in accordance with City policy as set forth in the General Plan."

(e) Edenvale Area Development Policy, Purpose Statement, explains:

"The primary reasons for adoption of the Area Development Policy are to manage the traffic congestion associated with near term development in the Edenvale Redevelopment Area, promote General Plan goals for economic development and particularly high technology driving industries, encourage a citywide reverse commute to jobs at southerly locations in San Jose, and provide for transit-oriented, mixed-use residential and commercial development to increase internalization of automobile trips and promote transit ridership"

9. Pursuant to Sections 19.12.130 and 19.12.220 of the San Jose Municipal Code and Government Code sections 66474(a), (b) and (c), the Applicant's Proposal is inconsistent with the San Jose 2020 General Plan provisions governing industrial parks, the IP Zoning District, and the goals of the New Edenvale Redevelopment Area and the Edenvale Area Development Policy cited in Section 8 above for all of the reasons that follow:

(a) The large-scale technology users and the driving industry sector which the City desires to attract to the New Edenvale Redevelopment Area as specified in the land use document in Section 8 above typically have space requirements of 4,000 to 10,000 square feet, or greater, whereas office uses are the likely tenants for 1,450 or minimally larger square foot spaces.

(b) The applicant's representatives have indicated to staff that the marketing of these condominium units will be as office condominiums

(c) The Applicant's Proposal is a tentative map application for the proposed 64-lot condominium project in sixteen (16) buildings currently under construction on the

site. Based upon staff and Council review, the Applicant's Proposal for 64 condominium units of an average size of 1,530 square feet would likely result in the majority of the site being used for offices. This subdivision into 64 small units and the potential sale of each of the 64 units to different property owners would have the effect of freezing the size of the units and providing less flexibility in unit size than necessary to provide for viable and continuing industrial uses on the Subject Property. Although the applicable General Plan and other applicable land use documents authorize some commercial or office uses in the Industrial Park zone, such as the Subject Property, Industrial Park uses may only contain a very limited amount of supportive and compatible commercial uses, and only when those uses are of a scale and design providing support only to the needs of businesses and their employees in the immediate industrial area.

(d) The Planning Director's decision to approve of the Tentative Condominium Map on the condition that there is a reduction in the number of condominium units from 64 to 34 with a minimum size of 1,450 square feet would provide for an average unit size of approximately 2,880 square feet in size, while other units of 3,000 square feet and greater will necessarily result from this reduction in number of units. However, the Council has determined that a modification of the Planning Director's conditional approval of the Tentative Condominium Map to allow for a maximum of 48 units, while maintaining the minimum unit size of 1,450 square feet, will allow for an average unit size of approximately 2,040 square feet, increase the size of some of the units, and allow for a mix of potential uses including both industrial and office is consistent with the General Plan in that office uses will only be in conjunction with the primary industrial use of the property by providing sufficient square footage in many of the units for industrial uses, and provide for several separate uses which may be zoned, planned, developed and managed as a unit. The reduction in the number of units by the City Council supports use of the Subject Property for focus industries of the Edenvale Redevelopment Area, the large-scale technology companies and the driving industry sector.

(e) The Applicant's Proposal includes 295 parking spaces at a ratio of approximately one space to 282 square feet of building area. Pursuant to the Zoning Code parking requirements, an "all-office" building would require 334 parking spaces, at a ratio of one space per 250 square feet of floor area. Thus, the use of the site for office purposes would result in a deficit of 39 parking spaces to support the 64-unit office use. The City Council approval of a Tentative Condominium Map for a maximum of 48 condominium units to be allowed on the site, with the average unit size of 2,040 square feet, with some units considerably larger, will provide for occupancy by a range of industrial park users, larger-scale technology users and the driving industry sector, in addition to office uses. With a mix of industrial uses, including some office, the available 295 on-site parking spaces at a ratio of approximately one space for 282 square feet of building area would be adequate.

(f) Between November 2005 to April 2006, city staff, working together with representatives from the industrial and business communities, and with knowledge and participation of the Appellant, developed a Zoning Code amendment to clarify office

uses to be allowed in the IP Industrial Park Zoning district, and to specify the appropriate sizes for non-residential condominium units, citywide, and for industrial park condominiums in the core of North San Jose, and the New Edenvale Redevelopment Area.

(g) On April 18, 2006, after 3 hearings before the Planning Commission, the City Council approved Ordinance No. 27701 to amend the Zoning Code to establish 10,000 square feet as the minimum non-residential condominium unit size in New Edenvale in a minimum 20,000 square foot building, which will become effective on June 30, 2006. Neither the Applicant's Proposal nor the Tentative Condominium Map conditionally approved by the Planning Director would comply with the minimum square footage per unit requirements of Ordinance No. 27701. However, given the "pipeline" nature of this Project, the conditionally approved Tentative Condominium Map as modified on appeal to the City Council with the reduction in the number of units proposed to 48 complies with the General Plan and other land use policies in effect at the time of the application, the Planning Director's conditional approval of the application, and the Council's modification of the Planning Director's conditional approval of the application upon appeal as specified above.

(h) The environmental impacts of the Applicant's Proposal, the project as conditionally approved by the Tentative Condominium Map with the reduction in number of units, and the modification of the Tentative Condominium Map upon appeal to the City Council, will not have an unacceptable negative effect on adjacent property or properties in that:

(1) Under the provisions of Section 15315 State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

(2) The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

**FINDINGS:**

1. The facts stated hereinabove are hereby adopted and incorporated herein as findings.

2. The sections listed below of the Tentative Condominium Map attached hereto as Exhibit "B", are hereby amended as follows:

(a) "**FACTS**" **Section 10** is hereby amended in its entirety to read as follows:

"10. The applicant's proposal includes 295 parking spaces at a ratio of approximately one space to 282 square feet of building area. Per the Zoning Code parking requirements, an 'all-office' building would require 334 parking spaces, at a ratio of one space per 250 square feet of floor area."

(b) **“FACTS” Section 14** is hereby amended in its entirety to read as follows:

“14. Given the ‘pipeline’ nature of the project, the City Council on appeal determined that approval of 48 condominium units with a minimum size of 1,450 square feet on the subject site would provide for each of sixteen (16) buildings to be divided into at least 2 parts, and the larger buildings into 3 or 4 parts, or some other combination not to exceed 48 units.”

(c) **“FINDINGS” Section 1** is hereby amended in its entirety to read as follows:

“1. The proposed Tentative Map will reconfigure 3 parcels into 1 condominium lot with up to 48 condominium units for industrial park uses with a minimum unit size of 1,450 square feet, with an average unit size of approximately 2,040 square feet across all 98,000 square feet of building area on the site. To the extent that some condominium units are subdivided at the minimum 1,450 square feet, other units will necessarily result which are 2,500 square feet and greater.

(d) **“FINDINGS” Section 2** is hereby amended in its entirety to read as follows:

“2. The City Council of the City of San José finds that the proposed subdivision shown on the Tentative Map, subject to the conditions listed below and the requirements for project design and improvements, is consistent with applicable General and Specific Plans of the City of San José, in that the Tentative Map will allow the reconfiguration of 3 parcels into 1 condominium lot with up to 48 condominium units for industrial park uses with a minimum unit size of 1,450 square feet on a 9.9 gross acre site on the subject site, of which has a General Plan Land Use Transportation Diagram designation of Industrial Park which allows for industrial park uses. With the maximum number of lots limited to 48, the average unit size will be approximately 2,040 square feet, with some units considerably larger, which will provide for a range of industrial park users, larger-scale technology users and the driving industry sector, in addition to office uses. With a mix of uses, including some office, the available 295 on-site parking spaces at a ratio of approximately one space for 282 square feet of building area would be adequate.

(e) **“FINDINGS” Section 3** is hereby amended in its entirety and replaced with the findings in Section 9 of this Council Resolution relating to inconsistency of the application on appeal with Government Code sections 66474(a), (b) and (c).

(f) **“APPROVED SUBJECT TO THE FOLLOWING CONDITIONS” Section 4** is hereby amended in its entirety as follows:

“4. REVISED PLANS. Within 60 days of the adoption of this Resolution specifying the City Council’s determination of the Applicant’s appeal of the Planning Director’s conditional approval of Tentative Subdivision Map, File No. T05-094, or prior to

recording of a Final Map, the applicant shall submit revised plans that show up to 48 condominium units for industrial park uses with a minimum unit size of 1,450 square feet, to the satisfaction of the Director of Planning.”

3. With the exception of the sections amended by Finding No. 2 of this Council Resolution, the remaining provisions in the Tentative Condominium Map attached hereto as Exhibit “B”, and all of the facts, findings, conditions, and conclusions therein, are hereby adopted as findings by the City Council and shall remain in full force and effect.

4. The expiration of the Tentative Condominium Map approved hereby is governed by the provisions of the Subdivision Map Act.

ADOPTED this 27th day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE, NGUYEN, PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk

**NOTICE TO PARTIES**

**The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.**